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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| BEVERLY G. JONES,<br><br>Petitioner Employee,<br><br>v.<br><br>THE INDUSTRIAL COMMISSION OF ARIZONA,<br><br>Respondent,<br><br>RAYTHEON COMPANY,<br><br>Respondent Employer,<br><br>LIBERTY MUTUAL FIRE INSURANCE COMPANY,<br><br>Respondent Insurer. | 2 CA-IC 2010-0009<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20092330409

Insurer No. WC648428526

Thomas A. Ireson, Administrative Law Judge

AWARD AFFIRMED

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Beverly G. Jones

Tucson
In Propria Persona

The Industrial Commission of Arizona
By Andrew F. Wade — Phoenix
Attorney for Respondent

Moeller Law Office
By M. Ted Moeller — Tucson
Attorney for Respondents
Employer and Insurer

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E C K E R S T R O M, Judge.

**¶1** In this statutory special action, petitioner employee Beverly Jones challenges the Industrial Commission of Arizona's decision that her alleged industrial injury was noncompensable. Because we find that the medical evidence of record supports the award, we affirm.

**Factual and Procedural Background**

**¶2** On review, we consider the evidence in the light most favorable to upholding the award, *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, ¶ 16, 41 P.3d 640, 643 (App. 2002), and we deferentially review all factual findings made by the administrative law judge (ALJ). *PFS v. Indus. Comm'n*, 191 Ariz. 274, 277, 955 P.2d 30, 33 (App. 1997). In early 2002, Jones was working as an inspector at Raytheon when a piece of metal shaving flew into the corner of her eyelid between her eyebrow and eye. She washed it off and immediately went back to work. The next day she awoke with bloodshot eyes, blisters in her mouth, and rashes on her face and nose.

**¶3** Convinced that these developments were the result of her contact with the metal shaving or her exposure to other fibers or chemicals in her work area, Jones

promptly sought medical treatment at her employer's dispensary. The nurse there told Jones she was likely suffering from herpes. Jones was examined by her own doctor later that week, who told her she was suffering from allergies.

**¶4** Over the subsequent years, Jones sought treatment for various eye problems, headaches, and facial pain. In August 2009, she filed a claim for workers' compensation benefits. After the respondent insurance carrier, Liberty Mutual Fire Insurance Company, issued a notice of claim status denying her compensation, Jones requested a hearing. Jones was the only witness who testified at the hearing, and she acknowledged that no medical professional had connected her symptoms to her purported industrial exposure, telling her instead she had "[d]ry eyes." A report prepared by Doctors Raymond Schumacher and Barton Hodes, who had performed an independent medical evaluation of Jones, found conclusive evidence that she suffered from inadequate tear production but stated that her "actual overall diagnosis is not clear." The report further stated that Jones's symptoms were "substantially disproportionate to objective ophthalmological findings" and concluded it was "medically improbable that any portion of the current symptoms or findings have been caused by [Jones]'s work."

**¶5** The ALJ upheld the denial of benefits in its decision upon hearing, findings, and award for noncompensable claim. The ALJ found that the cause of Jones's symptoms was not readily apparent and that "expert medical evidence [wa]s necessary to establish a diagnosis and causal relationship to [her] work." Citing the independent medical report, the ALJ determined Jones had not established a causal relationship

between her injury and her workplace; thus, the injury was noncompensable.[1] This decision was affirmed after Jones filed a request for administrative review. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(2) and 23-951 and Rule 10, Ariz. R. P. Spec. Actions.

**Discussion**

**¶6** "To prove compensability, the claimant must establish all the elements of h[er] claim," including that she has "suffered an injury and that the injury was causally related to h[er] employment." *W. Bonded Prods. v. Indus. Comm'n*, 132 Ariz. 526, 527, 647 P.2d 657, 658 (App. 1982). "The burden is on the claimant . . . to show by a preponderance of the evidence al[l] the elements of h[er] claim, and the carrier does not have to disprove it." *Lawler v. Indus. Comm'n*, 24 Ariz. App. 282, 284, 537 P.2d 1340, 1342 (1975).

**¶7** Jones first "questions" the findings of the medical report because the doctors who prepared it acknowledged they could "hypothesize" various "conditions that might occur on an irritant or allergic basis" that would account for Jones's symptoms, but they declined to do so "in the absence of more detailed exposure data," such as material safety data sheets kept by her employer. She appears to suggest that in the absence of this information, the medical report was incomplete and its conclusions should not have been relied upon by the ALJ.

[1]The ALJ also found, in the alternative, that Jones had not timely filed her workers' compensation claim and it consequently lacked jurisdiction to consider her claim. Although she also challenges this finding on review, we need not address it, given our disposition.

**¶8** As the respondents correctly observe, however, it was Jones's obligation to prove the cause of her injury; no evidence was required to disprove her claim. *See Russell v. Indus. Comm'n*, 104 Ariz. 548, 554, 456 P.2d 918, 924 (1969), *overruled on other grounds by Parsons v. Bekins Freight*, 108 Ariz. 130, 493 P.2d 913 (1972); *Bishop v. Indus. Comm'n*, 17 Ariz. App. 42, 44, 495 P.2d 482, 484 (1972). Furthermore, even in the absence of more detailed exposure information, the doctors' opinion that Jones's conditions likely were not caused by her workplace was supported by the surrounding facts. As noted in the medical report, Jones had been away from her work environment for at least three months at the time of her examination, and although she reported her symptoms did not improve during this period, the doctors "f[ound] it implausible that, even if a work-related exposure w[ere] temporarily responsible for her symptoms at some point in time, she would continue to have allergic or irritant symptoms this long after cessation of work-related exposure."

**¶9** Jones next contends the report itself established she suffered a compensable injury insofar as the doctors could "hypothesize" certain irritants or allergens responsible for her symptoms during her employment. Yet the doctors expressly refused to do so on the ground that this would be an "exercise in speculation." Indeed, rather than establishing that her symptoms were causally connected to her workplace, the report concluded that it was "medically improbable" any workplace exposure was responsible for Jones's symptoms. The ALJ therefore reasonably concluded that the report itself did not satisfy the preponderance of the evidence standard necessary to establish Jones's claim. *See Spielman v. Indus. Comm'n*, 163 Ariz. 493, 496, 788 P.2d 1244, 1247 (App.

1989) (ALJ's interpretation of medical evidence showing causation must be accepted if reasonable).

**¶10** Jones further argues she was not required to present expert medical evidence because "the causes of [her] symptoms originate[d] from work and [were] . . . readily apparent to a lay person." We have long recognized that unless the result of an accident is clearly apparent to a lay person, expert medical evidence is required to establish the fact of an injury and its causal connection to employment. *W. Bonded Prods.*, 132 Ariz. at 527, 647 P.2d at 658. The reason for this rule, as we articulated in *Western Bonded Products*, is that "[a] lay person does not possess the knowledge necessary to make an accurate diagnosis or to describe a condition's etiology." *Id.* Thus, "[e]ven a logical interpretation of events surrounding the industrial incident and [a] claimant's ensuing complaints, when made by a layman, is no more than speculation." *Id.*

**¶11** Here, various diagnoses were offered by several medical professionals, none of whom perceived a causal connection between Jones's symptoms and her workplace. Even if her own interpretation of the cause of her ailments was indeed a plausible one, it was not readily apparent to medical professionals, much less lay persons, and therefore remains speculative. Accordingly, the ALJ did not err in finding medical evidence was both required in this case and insufficient to establish that Jones had suffered a compensable injury.

## Disposition

**¶12** For the foregoing reasons, the industrial commission's award is affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge